

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1:03-CR-172

Plaintiff,

Hon. Gordon J. Quist

vs.

ROLANDO DESHONE LESLEY,

Defendant.

ORDER

Defendant has filed a notice of appeal with the Sixth Circuit Court of Appeals, which has been docketed as Case No. 04-2094 in that court. This matter is now before the court on defendant's financial affidavit (CJA 23) for appointment of appellate counsel on appeal (docket no. 35). The motion has been referred to the undersigned for decision pursuant to 28 U.S.C. § 636(b)(1)(A).

The Sixth Circuit rules require the district court to determine a defendant's indigency for purposes of appointment of appellate counsel. Under 6 Cir. R. 24, where a convicted defendant appears to qualify for *in forma pauperis* status on appeal, but did not in the district court, trial counsel must see that the defendant reviews and completes CJA Form 23 and sends it to the district court. In addition, under 6 Cir. R. 101(b), "[i]f trial counsel was appointed and a notice of appeal has been filed, trial counsel will be appointed as appellate counsel without further proof of the defendant's indigency." Here, the district court initially determined that defendant was indigent and appointed the federal public defender as his trial counsel on February 13, 2004. *See* docket no. 5.

On February 19, 2004, attorney Frank S. Spies was appointed as defendant's counsel. *See* docket no. 10. Then, pursuant to a stipulation and order of substitution entered on April 2, 2004, Mr. Spies withdrew as defendant's attorney and defendant retained attorney David Kaczor to represent him in this matter. *See* docket no. 19.

The district court found defendant to be indigent and counsel was appointed on February 13, 2004. Defendant has been in custody since that date. *See* docket no. 14. While defendant subsequently retained counsel, there is no evidence that his actual financial situation changed. Based upon and its initial determination of indigency and its review of petitioner's recently filed CJA Form 23, the court finds that petitioner qualifies for appointment of appellate counsel. *See* 6 Cir. R. 101(b). Accordingly, defendant's application to proceed *in forma pauperis* on appeal is GRANTED.

IT IS SO ORDERED.

Dated: May 3, 2005

/s/ Hugh W. Brenneman, Jr.

Hugh W. Brenneman, Jr.
United States Magistrate Judge